

SENATE CHAMBER,  
AUSTIN, TEXAS, Monday, April 17, 1871. }

Senate met pursuant to adjournment; President Campbell presiding.

Roll called; quorum present.

Absent—excused—Senators Flanagan and Baker.

Prayer by the Chaplain.

Journals of Thursday and Friday last were read and approved.

### PETITIONS AND MEMORIALS.

By Senator Dohoney: Memorial of J. P. Jamison, deputy sheriff of Red River county. Read and referred to the Committee on Claims and Accounts.

### REPORTS OF STANDING COMMITTEES.

Reports of Committee on Enrolled Bills:

COMMITTEE ROOM,  
AUSTIN, April 13, 1871.

Hon. DON CAMPBELL.

President of the Senate:

SIR: Your Committee on Enrolled Bills have carefully examined and find correctly enrolled Senate bill No. 303, entitled "An act providing for the transfer of certain causes pending in the District Court of Polk county from the county of Polk to the county of San Jacinto," and Senate bill No. 236 entitled "An act to incorporate the Tyler Cemetery Association;" also Senate bill No. 164, entitled "An act to establish a ferry across the Sabine river at or near Fredonio, Rusk county, Texas;" also Senate bill No. 96, entitled "An act to amend 'an act to incorporate the Alamo Fire Association;'" also Senate bill No. 122, entitled "An act to incorporate the Excelsior Bridge and Turnpike Company," and to-day presented them to the Governor for his approval.

B. J. PRIDGEN,  
Chairman.

COMMITTEE ROOM.  
AUSTIN, April 14, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Enrolled Bills have carefully examined

and find correctly enrolled Senate bill No. 186, entitled "An act to provide for the more permanent preservation of the graves in the State Cemetery at Austin, Texas;" also Senate bill No. 168, entitled "An act to incorporate the Galveston and Denver City Air Line Railway, and to promote the construction thereof," and to-day presented them to the Governor for his approval.

B. J. PRIDGEN,  
Chairman.

Reports read and received.

Report of Committee on Engrossed Bills:

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Engrossed Bills, having examined and compared Senate bill No. 328, "An act to incorporate the International Insurance Company," and No. 344, "An act to incorporate the Colorado River Improvement and Navigation Company," find the same to be correctly engrossed.

G. T. RUBY,  
E. L. DOHONEY.

Report read and received.

Reports of Committee on Private Land Claims:

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Private Land Claims, to whom were referred House bills No. 70, "An act for the relief of Thomas W. Haynes;" No. 242, "An act for the relief of Christian Boehringer," No. 247, "An act for the relief of R. H. Walker;" No. 248, "An act for the relief of Richard O'Hanlon," and No. 425, "An act to authorize the Commissioner of the General Land Office to issue to B. H. Davis, assignee, an unconditional second class head-right certificate for six hundred and forty acres of land, upon conditional No. 90," after careful consideration, instruct me to report the same back, and recommend their passage.

Respectfully,

G. T. RUBY,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Private Land Claims, to whom was referred Senate bill No. 133, entitled "An act for the relief of the heirs of Orlando Forrest," also House bill No. 328, "An act for the relief of the heirs of Orlando Forrest," after careful consideration, instruct me to report the same back unfavorably, there being no proof that said Orlando Forrest died in the service of the Republic.

Respectfully,

G. T. RUBY.

Chairman.

Reports read and laid over under the rules.

Reports of Committee on Judiciary :

COMMITTEE ROOM,  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 238, entitled "An act to amend 'an act fixing the terms of the Supreme Court of the State of Texas, and authorizing and requiring the court to establish rules,'" after careful consideration, instruct me to report the same back and recommend its passage with accompanying amendments.

Respectfully,

A. J. FOUNTAIN,

Chairman.

Amendments of Judiciary Committee to Senate bill No. 238 :  
Amend caption of bill by adding after the word "rules" the words "approved August 13, A. D. 1870."

Amend section one, lines sixteen and seventeen, by striking out the words 'beginning of the term,' and insert the following, 'time assigned for the hearing of causes from the several districts.'

COMMITTEE ROOM.  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 141, entitled "An act supplementary to 'an act prescribing the powers and duties of clerks of the District Courts,' ap-

proved August 12, 1870," after careful consideration, instruct me to report the same back, and recommend that it be laid on the table.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Reports read and laid over under the rules.

Report of Committee on Public Debt :

COMMITTEE ROOM,  
AUSTIN, April 14, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Public Debt, to whom was referred House bill No. 215, entitled "An act to provide for the payment of the public debt of the State of Texas," have had the same under careful consideration and unanimously instruct me to report it back to the Senate and recommend that the bill do pass with the following amendments.

E. PETTIT,  
Chairman.

Amendments · Section one, line six, after word "President," insert words "and legal adviser as to all matters coming before them;" also, in line thirteen, after word "authority" insert "and also all claims against the State which, though not reported upon by said board, were and are valid claims against the State, and were authorized by pre-existing law."

Section two, line fourteen, strike out phrase "one thousand" and insert "five hundred."

Section three, line seven, after word "of" strike out phrase "at a greater discount than five per cent."

Section six, line seven, strike out "State Treasurer" and insert "Comptroller;" also, line ten, after word "States" insert "or in the bonds authorized by this act;" also, line fourteen, after word "bonds" insert "of the United States;" also, line sixteen, strike out word "same" and insert "bonds herein authorized to be issued, and destroy the same in the presence of the Governor."

Section seven, line first, after the word "thousand," insert "five hundred"; also, line four, after word "execution," insert "and said board is authorized to appoint an auditing clerk to assist them in their labors, who shall be a good accountant, and whose duty it shall be to arrange and prepare these claims for the examination and action of the board. The pay of this auditing clerk shall be seven dollars per diem for the time necessarily employed in this business,

which compensation shall be paid him on the certificate of the president of the board."

Report read.

Senator Pettit moved that the rules be suspended to consider the report and bill. Yeas and nays called for, and motion to suspend rules lost by the following vote:

Yeas—Broughton, Douglass, Fountain, Hertzberg, Pettit, Pridgen, Ruby, Saylor—8.

Nays—Mr. President, Bell, Bowers, Cole, Dohoney, Evans, Ford, Gaines, Hall, Hillebrand, Latimer, Mills, Parsons, Pickett, Pyle, Rawson, Shannon, Tendick—18.

Reports of Committee on Finance:

COMMITTEE ROOM,  
AUSTIN, April 14, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Finance, to whom was referred House bill No. 254, entitled "An act appropriating money to pay the unpaid balance of salaries of the several district judges, in this State, for the months of July and August, 1870," have duly considered the same, and would return it to the Senate and recommend its passage.

Very respectfully,

W. A. SAYLOR,  
Chairman.

Report read and laid over under the rules.

COMMITTEE ROOM,  
AUSTIN, April 14, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Finance, to whom was referred Senate bill No. 269, "An act to establish a responsible maximum rate of charges for transportation of passengers on the different railroads in this State," have had the same under consideration, and I am instructed to report it back, with recommendation that it do pass.

W. A. SAYLOR,  
Chairman.

Report read and laid over under the rules.

COMMITTEE ROOM,  
AUSTIN, April 14, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Finance, to whom was referred Senate

bill No. 310, "An act to authorize the Governor to procure from the archives of the old Spanish mission the history of this State prior to 1793 and to make appropriation for the same, have had the same under consideration, and I am instructed to report the same back and ask its reference to the Committee on State Affairs.

W. A. SAYLOR,  
Chairman.

On motion of Senator Saylor, the rules were suspended to consider the report, and, on further motion, the report was adopted and Senate bill No. 310 referred to Committee on State Affairs.

### MESSAGES.

Message from the House by Chief Clerk, transmitting, for signature, the following enrolled House bills:

House bill No. 464, "An act for the relief of William Scanlan, late assessor and collector of Cameron county."

House bill No. 214, "An act to incorporate the Washington County Banking and Insurance Company."

House bill No. 218, "An act to authorize the County Court of Titus county to issue interest-bearing bonds, and to levy a tax to pay the same."

House bill No. 109, "An act to incorporate the Houston Real Estate and Banking Company."

House bill No. 120, "An act to authorize the presiding justices of the several counties to perform acts for the benefit of idiots and insane persons."

House bill No. 362, "An act authorizing Julius N. Garret to erect a toll bridge over the flat fork of Tennaha, in the county of Shelby."

House bill No. 391, "An act to amend an act entitled 'an act prescribing the times of holding the district courts in the several judicial districts in the State,' approved August 10, 1870."

Enrolled bills signed by the President and returned to the House.

Senator Parsons submitted the following majority report of the Judiciary Committee:

Report of the Judiciary Committee on the authority of the Legislature to alter, amend or repeal certain sections of "An act incorporating the International Railroad Company," passed August 6, 1870:

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your committee to whom was referred a resolution of the

Senate, with instructions to examine into the authority of the Legislature of the State to alter, amend or repeal sections nine and ten of an act entitled "An act to incorporate the International Railroad, and to provide for the aid of the State of Texas in constructing the same," have had the same under consideration, and herewith submit their report: The leading point of the advocates of the repeal of the donation clause is that because of that clause the act has two objects, and is therefore unconstitutional. Your committee respectfully represent that this charter, like every other charter on our statute books since annexation, which had granted subsidy or aid in constructing the line chartered, is no more obnoxious to the allegation as made that this act contains two objects, and is therefore unconstitutional, than said charters containing grants of land in addition to the ordinary franchises. Every railroad charter heretofore granted by Texas since 1846, containing a land grant to aid in constructing the line, was granted under constitutions holding the same provision as the present constitution under which the advocates of repeal hold that the International Railroad act is unconstitutional, to-wit: Section seventeen, article twelve, "every law enacted by the Legislature shall embrace but one object and this shall be expressed in the title."

Your committee hold that it is a late hour in Texas railroad legislation to advance the doctrine that any act conferring the authority to construct, coupled with a provision to give State aid to assist the construction, are two such different "objects" as will invalidate the charter.

We hold that the primary "object" of all such acts has been the construction of the line of road chartered, and that any authority, franchise, aid, or grant, in such charter expressed, looking to the "one object" of construction, is strictly constitutional, for the object or purpose is not twofold but absolutely single.

That this provision of our Constitution does not apply to charters, with such provisions as the above, is clear from the expressed judicial opinion to the contrary by our Supreme Court. In *Tadlock vs. Eccles*, 20 Texas, 792, it was held that the word "object" should not be understood in the sense of "provision."

"Nor could it have been intended that no act of legislation should be constitutional which had reference to the accomplishment of more than one ultimate end, for an act having one main or principal object in view may incidentally effect or be promotive of others, and it would be impossible to legislate so as to prevent this consequence. The intention, doubtless, was to prevent embracing in an act having one ostensible object principles having no relevancy to that object, but really designed to effectuate other and wholly different objects,

and thus to conceal and disguise the real object proposed by the provisions of an act under a false and deceptive title."

The traditionary history of this clause, which was first inserted in the constitution of Georgia in 1798, proves that our Supreme Court interpretation above is correct, for the great Yazoo territorial fraud of 1795 was concealed and disguised under the caption of "an act for the payment of the late State troops."

Hence, the supreme court of Georgia, in the case of *Mayor vs. the State of Georgia*, (4 Georgia, 38,) held that the true interpretation of this clause is, that "so much only of a statute is void as contains matter different from what is expressed in the title."

We hold that the International charter contains no provision different from what is expressed in its title, for its caption reads, "An act to incorporate the International railroad, and to provide the aid of the State of Texas in constructing the same." Nor does your committee find that the International act, under this title as expressed, has "concealed and disguised under a false and deceptive title, the real object proposed." If it had, it would be obnoxious and unconstitutional, under the ruling in the case of *Tadlock vs. Eccles*.

But the recent decision of our present court, in the case of the city of San Antonio *vs. R. S. Gould*, is confidently appealed to as containing an interpretation of this clause of the Constitution, which the advocates of repeal claim invalidates the International charter, or section nine of the same. On the contrary, your committee hold that that decision fully sustains the above view of your committee, for even in that case (which was not analogous) the title to the act was defective, in not expressing the whole object of the act. The title was "An act to incorporate the San Antonio Railroad Company." The twelfth section was deemed obnoxious, by the court, as containing a provision "to provide the means for building such railroad," by enabling the city of San Antonio and other towns to become subscribers. This twelfth section the court held was "complicated and intricate, and would not ordinarily be found on a railroad charter, *unless some apt and appropriate allusion were made to it in the title.*"

The only construction that can be placed upon the latter clause is, that had some apt and appropriate allusion been made in the title (as is the case of the International act) even in that case the objection as to its unconstitutionality would have been obviated, especially "if it could be made to appear that all these matters and things provided in the twelfth section were necessary incidents to the building of a railroad from San Antonio to the Gulf."

Your committee find in the International act that section nine authorizing the donation from the State, is "a necessary incident".



to the building of the railroad from Fulton to the Rio Grande, for without this "incident," as a condition precedent to the contract, the work never would have been projected, commenced or completed, as it has and will be; and further, that the very section containing this "necessary incident" has "apt and appropriate allusion made to it in the title of the act;" and hence your committee hold that under this very decision the International act has but one object, with its necessary incidents, which one and all are, with remarkable aptness and appropriateness, clearly expressed in its title as follows: "An act to incorporate the International Railroad Company, and to provide for the aid of the State of Texas in constructing the same."

The minority of the committee claim that the ninth section, making a donation of ten thousand dollars to each mile actually constructed, and providing for its payment by taxation, is unconstitutional, as the exercise of an unauthorized authority, in the Legislature. In support of this theory the Michigan decision, in the case of the Detroit and Howard Railroad Company *vs.* the Township Board of Salem, from the July number, 1870, of the Bench and Bar, is cited.

Your committee hold that this decision fully sustains the action of this Legislature, in its constitutional authority, to impose taxes for, "where the State itself is to receive the benefit of the taxation in the increase of its public fund or the improvement of its public property, there can be no doubt of the public character of the purpose;" page 104.

The distinction that court drew was between works of a local and those of a general public nature. "It must be imposed for a public and not for a mere private purpose." Where it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation and becomes plunder." Granted, and what were the facts in that special case? The court says, "In the present case it appears that the object of the burden is not to raise money for a purpose of general interest," and therefore declared the act unconstitutional, but, at the same time, declare that as taxation "must be imposed for a public and not for a private purpose," clearly define that public purpose to be "where the State itself is to receive the benefit of the taxation in the increase of its public fund or the improvement of its public property, there can be no doubt of the public character of the purpose."

This road, if it crossed a mere point upon the border, as the segment of a circle, might be deemed local; but as it strikes through the heart of Texas "there can be no doubt of the public character of the purpose," and where this fact is demonstrated, the Michigan decision itself declares such an enterprise to be the legitimate and constitutional object of aid by legislative enactment.

While in the Detroit case it is admitted by the court the object of the burden was not for a general State interest, yet your committee hold that in the case of the International charter the object of the burden was for a general State interest; and that the public character of that purpose is demonstrated in "the improvement of its public property, (that is, the enhancement of its public domain,) and in the advanced value of every species of property, real and personal, subject to taxation, which is dependant on facilities to market to realize the standard values at the commercial centres of consumption.

Your committee hold that most erroneous conceptions in regard to donations and subsidy aid to internal improvements prevail. It is demonstrable that in all the States West, where subsidy has been granted by either National or State Government, that the enhancement in the taxable value of lands by railroads has generally amounted to several times the cost of the roads. Hence the aid of this character by the National Government, though in many instances enough to almost build the roads, have proven to be the most valuable investments the Government could have made. In the same ratio, the aid given by counties, towns and cities has often been returned to them fourfold.

The increased value of property by railroads has often been so great that the increased revenue caused by this enhanced value has been sufficient by the time the roads were built to pay the entire interest on all the bonds issued in aid of these roads, and to retire the bonds themselves in a very few years. Hence the so-called donations or subsidy in aid of works of general State interest, "where the State is to receive the benefit of the taxation, in the increase of its public fund or the improvement of its public property," is improperly named a donation, but is rather in the nature of a contract between the State and company—the one stipulating to pay in land or money so much per mile, in consideration that the company (as in the case of the International) shall construct an iron highway centrally from the northeast to the southwest boundary of our State, and thereby enhance fourfold every species of public and private property throughout its entire limits.

So much positive ungrounded apprehension exists in regard to State aid to great public works of improvement that your committee feel that it would be profitable to the country to briefly recur to the experience of the State which above all others has been the most lavish in expenditure of public means for internal improvements, and whose sagacity has been vindicated by the success of its every public enterprise, whose population has swelled to millions and whose credit is high on every stock exchange—we refer to the State

of Pennsylvania. Senator Cameron, her most successful statesman, has given all new States just embarking in the career of internal improvements, the benefit of the experience of his own State in a recent brief essay upon internal improvements in Pennsylvania. At the risk of incurring the charge of prolixity, we make a few extracts, because as the question of the repeal of the first subsidy act has been suggested, we seek to meet and demonstrate the fallacy of the alarm of its advocates by relighting the lamp of experience in other States.

Senator Cameron describes the result of the completion of the first canal in 1820 by a State appropriation of one million of dollars. Although small, he says yet the work did a great deal of good :

"But the most remarkable thing about it was its unpopularity with the masses. Not only the members of the General Assembly who passed the bill, but Governor Heister, who signed the act of incorporation, were driven from office at the first opportunity legally presented for testing public opinion, and the party to which they belonged went into a minority. I remember well what a mighty sum a million of dollars then seemed to be, and the political revolution caused by this appropriation showed me that the idea of its vastness was not confined by any means to myself."

"Our system of canals was, however, completed, and the benefits derived from them were incalculable. When they were commenced our State was poor. Industry languished. The interchange of her products was difficult. Population was sparse. Intelligence was not generally diffused. Manufacturers struggled weakly along. Work was not plentiful. Wages were low. When they were finished, the busy hum of industry was heard on every hand. Our population had grown until we numbered millions. Our iron ore beds were yielding their precious hoards for human use. Coal mines, unknown or useless until means were provided for transporting their wealth to market, now send millions of tons in every direction. Progress in every walk of advanced civilization was realized, and we were on the high road to permanent prosperity. But in the meantime a new and better means of communication had been discovered, and the building of railroads quickly reduced the value of our canals; and the works we had completed at so much cost, and with such infinite labor, were suddenly superseded. We lost nearly all the money they had cost us, but the investment was wisely made. The return to our State was many times greater than the outlay."

"In the meantime the railroad system had been commenced, and the Pennsylvania railroad, under the charge of a man of extra-

ordinary ability, John Edgar Thomson, was rapidly pushed to completion. Another was built to carry anthracite coal from the Schuylkill mines to market."

"Each of these was forced to contend with difficulty and prejudice. All were unpopular, and all were looked upon with suspicion until they actually forced their usefulness on the public mind. Those who had made the fight for canals were forced to go over the whole ground again for railroads, and their double victory is greater than the success generally vouchsafed to the pioneers in any cause. These roads, with the Pennsylvania railroad and the lesser lines of improvements running through the coal region cost over \$207,000,000!

"The vindication of the sagacity of the pioneers in these great enterprises is complete. All these lines are now profitable. And it has been demonstrated everywhere in the United States, that every new railroad creates the business from which its stockholders receive their dividends. It seems, therefore, scarcely possible to fix a limit to our profitable railroad expansion. They open up new fields of enterprise, and this enterprise, in turn, makes the traffic which fills the coffers of the companies.

"I can not now look back to the struggle to impress the people with the advantages of railways, without a feeling of weariness at the seemingly hopeless struggle, and one of merriment at the general unbelief in our new fangled project."

"I have said that the outlay we made in building our public works was of great benefit to us, even when the canals have been rendered almost valueless through the competition of railroads. This is paradoxical, but it is true nevertheless. That expenditure gave our people a needed knowledge of our vast resources. It familiarized them with large expenditures when made for the public good. And it showed them how a great debt may be beneficially incurred, and yet not break down the enterprise of the people. We at one time owed \$41,698,595 74 By a steady attention to our finances, it is now reduced to \$31,000,000, with resources—the proceeds of the sale of our public works—on hand amounting to \$10,000,000. And while we have been steadily reducing our State debt, we have built five thousand three hundred and eighty-four miles of railways on the surface of the earth, and five hundred miles underground in our mines, at a cost of not less than \$850,000,000, for a mile of railroad in Pennsylvania means something. We have steadily reduced taxation. We sent 367,000 men to the Federal army. And our credit stands high on every stock exchange. Gratifying as this progress is, it is only a fair beginning. There is a large part of our territory rich in timber and full of iron, coal,

and all kinds of mineral wealth, so entirely undeveloped by railways that we call it 'the wilderness.' To open it up is the business of to-day, and I sincerely hope to see it done soon."

Senator Cameron, in conclusion of his essay, says: "I have thought that a retrospective survey of our wonderful development might point plainly to the duty of the future. For if the experience of what has gone before is not useful to cast light on what is yet to come, then it will be difficult indeed to discover wherein its value lies. It teaches me to devote time and labor for the advancement of all public improvements, and I trust it may have a like effect on all who have the time and patience to read what I have here written."

But to resume the constitutional inquiry submitted to your committee, the advocates of the repeal or alteration of the donation clause, or section nine of the International charter, hold that even if this act or section is constitutional, yet that "where the State is herself a party she may vary or alter the terms and character of her own obligation, or repudiate it altogether.

In reply to this your committee answer that, in addition to the whole current of judicial decisions in opposition to this doctrine, we directly interpose a provision of our newly adopted Constitution, which declares, section twenty-three, article twelve. "it shall be the duty of the Legislature to provide by law in all cases where a State and county debt is created, adequate means for the payment of the current interest, and two per cent. as a sinking fund for the redemption of the principal, and all such laws shall be irrepealable until interest and principal are fully paid."

Your committee hold that, as authorized, the Legislature did, in this instance, create a debt or obligation, and your committee are instructed to inquire into the authority to now repeal said obligation. The section of our Constitution cited affords sufficient answer when it declares that all such laws (to provide adequate means for the payment of the obligation) are absolutely "irrepealable."

The act of February 4, 1856, incorporating the Memphis and El Paso Company contained (like the International act), in addition to the ordinary powers and franchises, a special provision providing for the aid of the State in the construction of the same. The constitutionality of that and many similar charters has never been questioned on the ground of containing two objects, but an effort has been made by the State to recede from the contract, or obligation, granting the aid pledged at the passage of the act. In a recent suit in the United States Circuit Court, Justice Wood presiding, the court held: "The act of incorporation and land grant was a contract. It was between parties competent to contract, and

made upon a valuable consideration. (Mark the language of the court, the construction of the road was deemed "a valuable consideration," for the land grant.) "To allow the State to recede from the contract would be to sanction a most unjust and oppressive proceeding." The court concludes: "It is unnecessary to cite further authority to show that the charter and grant to the Memphis and El Paso Railroad Company is a contract. Being a contract, its obligations cannot be changed by the State. On this point, the current of authorities is unbroken." In the case of the State Bank of Ohio *vs.* Knoop, 16 Howard, 669, the court says: "Every valuable privilege given by a charter and which conduced to an acceptance of it and an organization under it, is a contract which cannot be changed by the Legislature, where the power to do so is not reserved by the charter."

Your committee believe that this obligation in the ninth section of the International charter "conduced to an acceptance of it, and an organization under it;" in fact, they are satisfied, that the seventy miles of ground broken and thirty miles of track laid, in the prompt and rapid execution of their part of the contract, since the passage of the act or obligation by the State, has resulted from the existence of section nine in the charter.

Aside from the prohibition of the National Constitution, that "no State shall pass any law impairing the obligations of a contract," the doctrine is absolutely settled that the right of a company to employ its franchises and all the privileges of the grant, is not in its nature revocable except by judicial proceeding. If there is default, it must be judicially ascertained and declared. 2 Kent, Com. p. 391.

In the case of the Connellsville railroad (American Law Register, vol. 13, p. 752) Mr. Justice Greer, in the circuit court of the United States, said: "A charter may be vacated by the decree of a judicial tribunal, in a proper proceeding for that purpose, without any such reservation in the act. But the Legislature possesses no judicial authority under the Constitution, and has no established course of proceeding in the exercise of such a power."

The minority of the committee claim the right of a State to vary, alter, or repudiate "the terms and character of her own obligation."

The Supreme Court of the United States (7 Peck, 459) declares that "the supreme law of the land expressly and peremptorily interdicts the Legislatures of the several States from passing any law impairing the obligations of contracts. Any legislative act, assuming the form of law having this effect, is a nullity and a blank upon the statute book."

Your committee thinks the ruling of this supreme tribunal is suf-

Scient answer to the proposition to impair, alter or repudiate the obligation of the State in ninth section.

The Constitution confers the power on the State or county to create a debt. Section twenty-three, article twelve, provides that "the inferior courts shall have power, upon a vote of two-thirds of the qualified voters, to assess and provide for the collection of a tax upon the taxable property to aid in the construction of internal improvements." Section twenty-three, article twelve, provides that "in all cases where State or county debt is created, adequate means," etc., shall be provided.

The Constitution could not confer a greater power upon a county than upon the State at large, and hence provided that where the State or county did create a debt, "adequate means, etc.," should be guaranteed, and such obligations were made irrevocable.

Your committee, therefore, whose duty it has been made by the instructions of the Senate "to examine into the authority of the Legislature to alter, amend or repeal said sections and to report to the Senate," in view of the unbroken authorities that any attempt to divest a franchise once conferred is purely a question for judicial consideration, and is prohibited to a Legislature; in view of the national Constitution, which interdicts a Legislature from "impairing the obligations of a contract," and especially in view of a plain provision of our own organic law, which declares that the means for the payment of an obligation once contracted "shall be irrevocable," we do report that it is the opinion of your Judiciary Committee that the Legislature has no authority to alter, amend or repeal section nine without the consent of the contracting parties, and your committee beg leave to be discharged from the further consideration of the same.

W. H. PARSONS,

For the Committee.

11 o'clock A. M.

The hour for special order Senate bill No. 308, "An act to organize the Bureau of Immigration," having arrived,

On motion of Senator Parsons, the consideration of special order was postponed until the matter pending be disposed of.

On motion of Senator Bell, Senator Gaines was granted leave of absence for the day on account of sickness.

Senator Pickett submitted the following minority report of the Judiciary Committee :

COMMITTEE ROOM,

AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: A minority of your Judiciary Committee, to whom were

referred sections nine and ten of an act entitled "An act to incorporate the International Railroad Company, and to provide for the aid of the State of Texas in constructing the same, passed August 5, 1870," with instructions to examine into the authority of the Legislature of the State to alter, amend or repeal said sections, and to report to the Senate, have had the same under consideration and herewith submit the following report:

Section seventeen of article twelve General Provisions of the Constitution of the State, provides that "Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title."

The title of the International charter is as follows: "An act to incorporate the International Railroad Company, and to provide for the aid of the State of Texas in constructing the same." Thus, it will be seen, that the very title of the act expresses two objects. The act itself contains seventeen sections. Fifteen sections of the act have for their object the incorporation of a railroad company. Section nine of the act embraces two distinct objects. The first object of section nine is a donation to the International Railroad Company of ten thousand dollars a mile for each mile of road the company may construct. The second object of section nine is the raising, by taxation, of a fund to pay said donation. Section fifteen embraces still another distinct object. The evident and obvious object of section ten is to limit the amount of indebtedness the State may contract.

Thus it will be seen that the International charter expresses two objects in its title, and embraces four distinct and separate objects in the body of the act; so that it is evident that this charter is unconstitutional in its title, and doubly unconstitutional in the act itself, which embraces four objects, when the Constitution declares that the title of an act shall express but one object and an act shall embrace but one object.

The question being considered here has been decided by our own Supreme Court, and is no longer an open question. In the case of the city of San Antonio *vs.* R. S. Gould, the court says: "A railroad might have been built in accordance with the provisions of the act, without calling into use any of the measures proposed in the twelfth section." The plain and literal meaning of seventeen sections of the act make it an act of incorporation, the proposed purpose of which is to build a railroad from San Antonio to the Gulf of Mexico, with the ordinary powers, rights and privileges incident to such franchises. The twelfth section of the act would, properly, in itself, be styled "An act to provide the means for building such railroad." We, therefore, regard it as repugnant in a strong sense



to the twenty-fourth section of the seventh article of the Constitution of 1845.

Section twenty-four of article seven of the Constitution of 1845 is identical, word for word, with section seventeen of article twelve of our present Constitution.

But section nine is believed to be obnoxious to another very strong constitutional objection, an objection fundamental and paramount. The section makes a donation to the International Railroad Company of ten thousand dollars for each mile of road the company may construct; and authorizes the levy of a tax upon the people of the State to pay said donation. In this, it is believed, the Legislature transcended the limits of its authority.

Taxation, it is submitted, can only be imposed for public purposes; that no legislative authority exists to impose taxes upon the people to make donations to private individuals or private corporations; that such an object is outside of the objects of taxation, and being outside of the objects of taxation, is outside of the power to tax.

The Supreme Court of Michigan, in the case of the Detroit and Howard Railroad Company vs. the Township Board of Salem decided this very question. Judge Cooley, delivering the opinion of the court, said: "I understand that in order to render valid a burden imposed by the Legislature under an exercise of the powers of taxation, the following requisites must appear:

"1st. It must be for a public and not for a private purpose. Taxation is a mode of raising revenues for public purposes only, and, as is said in some of the cases, when it is prostituted to objects in no way connected with the public interest or welfare, it ceases to be taxation and becomes plunder."

Such is the latest settled law on this subject. And it is believed to be the only true interpretation of the tax power.

If, then, the International railroad charter is unconstitutional, or if sections nine and ten of said charter are unconstitutional, the Legislature clearly has authority to remove them from the statute book, for they will be nullities if they remain there; but if sections nine and ten were not unconstitutional, but were valid and binding in law, what in that case would be legislative authority over them?

It is believed to be conceded that a State has the political right, whatever may be its ethics, to repudiate, sever or consolidate her public debt at a lower rate of interest than that which it bore when first created. If the State might do this after the debt was created, and after she had executed her obligation for the debt, no good reason is perceived why she might not do this in advance; and do so by refusing to execute her obligation for the debt.

If, then, the State has the right to repudiate her public debt, in whole or in part, (and sealing and consolidating are partial repudiations,) and that, too, whether she exercises this right after she has executed her obligation for the debt or before, it would seem that, through her Legislature, she would have the right to alter the sections referred to, and to vary or change the character and terms of her obligations.

The true rule on this subject appears to be this, that where the State is herself a party she may vary or alter the terms and character of her own obligation, or repudiate it altogether.

Then it is submitted that whether the International railroad charter, or sections nine and ten of said charter, are unconstitutional, or whether they are valid law, in either event the authority of the Legislature of the State to alter, amend or repeal said sections is clear.

E. B. PICKETT,  
M. H. BOWERS.

I concur in the foregoing report of the minority except as to the opinion that the State has the unqualified right to repudiate any of her public debt. While a State may have the political right to scale or vary the terms and character of debt due its own citizens in cases where justice or public expediency may require it, yet no State, in my opinion, has a right to utterly repudiate a debt created by virtue of a valid contract.

Believing, however, that the Legislature had no authority to create the so-called debt provided for in section nine of the aforesaid act, or to make the restriction contained in section ten, and that both said sections are nullities in law, I concur with the minority in the conclusion arrived at that the Legislature may properly repeal or wipe out said sections, and substitute, if it sees proper, valid provisions in their stead.

E. L. DOHONEY.

Majority and minority reports read.

By leave, Senator Ruby submitted the following reports of Committee on Private Land Claims:

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Private Land Claims, to whom was referred Senate bill No. 108, entitled "An act for the relief of the

heirs of W. J. Cowan, deceased," after careful consideration, instruct me to report the same back, and recommend its passage.

Respectfully,

G. T. RUBY,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 17, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Private Land Claims, to whom was referred the petition of James S. Patterson for land certificate due him, after careful consideration, instruct me to report the same back and recommend the passage of accompanying bill providing for the issuing of said certificate.

Respectfully,

G. T. RUBY,  
Chairman.

Senate bill No. 353, a bill to be entitled "An act for the relief of Jas. S. Patterson." Reports and bill read first time and laid over under the rules.

On motion of Senator Bell, the further consideration of postponed special order (Senate bill No. 308) was postponed to 11 A. M. tomorrow.

[Senator Fountain in the chair.]

## BILLS AND RESOLUTIONS.

By Senator Pickett : a resolution (Senate joint resolution No. 30) "Joint resolution proposing an amendment to section twenty-three of article twelve, general provisions of the Constitution of the State of Texas." Read first time and referred to Committee on Judiciary, and on motion of Senator Pickett, two hundred copies of the resolution ordered printed.

Senator Bell offered the following resolution : Senate concurrent resolution No. 4 :

*Resolved*, That the President of the Senate and the Speaker of the House of Representatives, the House of Representatives concurring, are hereby authorized and required to adjourn their respective bodies, *sine die*, upon Tuesday, the second day of May next, at 12 o'clock M.

Senator Saylor moved that the resolution be referred to the Committee on State Affairs.

Yeas and nays called for, and motion lost by the following vote :

Yeas—Ford, Fountain, Hall, Hertzberg, Hillebrand, Parsons, Pettit, Pridgen, Ruby, Saylor, Tendick—11.

Nays—Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Evans, Latimer, Mills, Pickett, Pyle, Shannon—12.

Senator Mills moved to reconsider the vote just taken.

Senator Ruby moved a call of the Senate. Call sustained.

Absent—excused—Senators Baker, Flanagan and Gaines.

President Campbell resumed the chair.

Question being upon the motion of Senator Mills to reconsider the vote, the yeas and nays were called for and motion to reconsider carried by the following vote:

Yeas—Mr. President, Ford, Fountain, Hall, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Pridgen, Rawson, Ruby, Saylor, Tendick—14.

Nays—Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Evans, Latimer, Pickett, Pyle, Shannon—11.

The question then being on the reference of the concurrent resolution, offered by Senator Bell, to the Committee on State Affairs, the yeas and nays were called for and concurrent resolution referred to Committee on State Affairs, by the following vote:

Yeas—Mr. President, Ford, Fountain, Hall, Hertzberg, Hillebrand, Mills, Parsons, Pettit, Pridgen, Rawson, Ruby, Saylor, Tendick—14.

Nays—Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Evans, Latimer, Pickett, Pyle, Shannon—11.

Senator Pettit moved that 10,000 copies of the majority and minority reports of the Judiciary Committee, submitted to-day, be printed. Motion lost.

Senator Mills moved that 500 copies of each report be printed.

Yeas and nays called for and motion lost by the following vote:

Yeas—Mr. President, Fountain, Hertzberg, Mills, Parsons, Pettit, Pickett, Pridgen, Saylor, Tendick—10.

Nays—Bell, Bowers, Broughton, Cole, Dohoney, Douglass, Evans, Ford, Hall, Hillebrand, Latimer, Pyle, Rawson, Ruby, Shannon—15.

Under direction of the President, the Secretary carried to the House for signature of the Speaker, the following enrolled Senate bills:

Senate bill No. 3, "An act to incorporate the Houston Gewerbe Verein, city of Houston, Harris county, for benevolent purposes."

Senate bill No. 36, "An act to incorporate the German Casino, of Columbus, Texas."

Senate bill No. 56, "An act for the relief of Moses L. Patton."

Senate bill No. 68, "An act to authorize the transmission of criminal process by telegraph and for other purposes."

Senate bill No. 72, "An act to incorporate the Hebrew Benevolent Association of Jefferson, Texas."

Senate bill No. 95, "An act to incorporate the San Antonio Hebrew Benevolent Association."

Senate bill No. 107, "An act to incorporate the San Antonio Shooting Company."

Senate bill No. 109, "An act to authorize J. F. Smith and J. Easley to erect a toll bridge over the mouth of Gutherie creek and the swamp channel of Grace's creek, in the county of Upshur and State of Texas."

Senate bill No. 206, "An act to incorporate the town of Eleccario, in El Paso county."

Senate bill No. 276, "An act to provide for the establishment of the Agricultural and Mechanical College of Texas."

Senate bill No. 345, "An act supplementary to 'an act to provide for the release of children or other persons, citizens of the State of Texas, who are, have been, or may hereafter be, held as captives by the Indians,' approved April 5th, 1871."

Enrolled bills signed by the Speaker, returned and signed by the President of the Senate.

The Secretary also carried to the House, for concurrence, Senate bill 344, "An act to incorporate the Colorado River Improvement and Navigation Company."

Senator Fountain offered the following resolution, which was adopted :

*Resolved*, That one thousand copies of the school bill and three thousand copies of the tax bill passed by this Legislature be printed for the use of the Senate,

And that the Sergeant-at-Arms be instructed to place upon the desk of each Senator, the number of copies to which he is entitled.

By leave, Senator Saylor introduced a bill (S. B. No. 354) "An act to legalize certain acts of the County Court of Brazos county." Read first time and referred to Committee on Judiciary.

On motion of Senator Bowers, the rules were suspended to take from file Senate Bill No. 223, "An act authorizing the compromise of certain suits brought by the State in District Court of Colorado County." Read second time, ordered engrossed, and passed to a third reading.

On motion of Senator Tendick the rules were further suspended and Senate bill No. 223 read third time and passed.

On motion of Senator Ruby, the rules were suspended to take from file House Bill No. 125, "An act to amend an act entitled an act to incorporate the Galveston City Company," approved February 5, 1841." Read second time.

On motion of Senator Saylor, the rules were further suspended and House bill No. 125 read third time and passed.

By leave, Senator Fountain introduced a bill, (Senate bill No. 355,) to be entitled "An act for the relief of Charles Korn." Read first time and referred to the Committee on Private Land Claims.

By leave, Senator Shannon presented a petition of citizens of Parker county asking to be incorporated in the name and style of the Parker County Agricultural and Mechanical Association." Read and referred to Committee on State Affairs.

Message from the House by the Chief Clerk, informing the Senate that the House had passed the following Senate bills :

Senate bill No. 59, "An act to amend 'an act prescribing the times of holding the district courts in the several judicial districts.'"

Senate bill No. 57, "An act to prescribe the manner in which cases shall be tried in the Supreme Court of the State of Texas when one or more judges may be disqualified by having presided at the trial of such case in the district or lower court, or from any other cause."

Senate bill No. 51, an act entitled "An act amendatory of article 263 of the Code of Criminal Procedure."

Senate bill No. 318, "An act to organize and incorporate the Marshall, Texas, and Mansfield, Louisiana, Railroad Company."

Also, transmitting, for concurrence, House bill No. 405, "An act to amend 'an act prescribing the times of holding the district courts in the several judicial districts of the State.'" Read first time and referred to Committee on Judiciary.

12 o'CLOCK, M.

The hour having arrived, the Senate resolved itself into a high court of impeachment for the trial of William H. Russell, Judge of the Fifteenth Judicial District of the State of Texas.

## HIGH COURT OF IMPEACHMENT.

APRIL 17, 1871.

THE STATE OF TEXAS vs. WILLIAM H. RUSSELL.

The Court having been opened by proclamation,

*Ordered*, That the Secretary inform the House that the Senate is now sitting as a high court of impeachment, for the trial of William H. Russell, Judge of the Fifteenth Judicial District of the State of Texas, and is ready to proceed with said trial.

A message was received from the House by the Chief Clerk that owing to the previous question being ordered on the adoption of a

resolution in the contested election case of Elam and English, the managers in the impeachment trial of William H. Russell, Judge of the Fifteenth Judicial District could not attend.

Senator Mills moved that the high court of impeachment adjourn to 12 o'clock M. to-morrow. Motion carried.

By direction of the President, the Sergeant-at-Arms closed the court by proclamation.

IN SENATE.

Under direction of the President, the Secretary informed the House that the high court of impeachment had adjourned to 12 o'clock M. to-morrow.

By leave, Senator Parsons submitted the following reports of the Committee on Internal Improvements :

COMMITTEE ROOM,  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Internal Improvements, to whom was referred House bill No. 331, have carefully considered the same, and beg leave to report the same back to your honorable body, with the recommendation that it do not pass.

W. H. PARSONS,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Internal Improvements, to whom was referred House bill No. 99, have had the same under careful consideration, and beg leave to report the same back to your honorable body, with the recommendation that it do pass, with the following amendment : Amend in section six, by adding : "*Provided*, that suits against said company may be maintained in any county through which said road is located, for damages for accidents from neglect of employ's."

W. H. PARSONS,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Internal Improvements, to whom was

referred House bill No. 406, have carefully examined the same, and beg to report it back to your honorable body and recommend that it do pass, with the following amendments: Amend by striking out section "six;" also, amend so that figure "seven" be stricken out and figure "six" be inserted, in lieu thereof. Amend in section eight, by striking out figure "eight" and inserting figure "seven."

W. H. PARSONS,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 15, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Internal Improvements, to whom was referred House bill No. 263, beg leave to report the same back to your honorable body, with the recommendation that it do pass.

W. H. PARSONS,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, March 15, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Internal Improvements, to whom was referred House bill No. 414, have carefully examined the same and beg leave to report the same back to your honorable body with the recommendation that it do pass.

W. H. PARSONS,  
Chairman.

Reports read and laid over under the rules.

Senator Fountain moved that the Senate stand adjourned until to-morrow at 10 A. M.

Yeas and nays called for, and carried by the following vote:

Yeas—Mr. President, Broughton, Evans, Fountain, Hall, Hertzberg, Hillebrand, Latimer, Pickett, Pyle, Rawson, Ruby, Tendick—13.

Nays—Bell, Bowers, Cole, Dohoney, Douglass, Ford, Mills, Parsons, Pettit, Pridgen, Shannon—11.

So the Senate, at 12:15 o'clock P. M., adjourned to 10 o'clock A. M. to-morrow.